

AN ACT

RELATING TO

ORPHAN'S COURTS.

704

AND FOR OTHER PURPOSES.

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LAW OF PENNSYLVANIA.

AN ACT

Relating to Orphans' Courts, and for other purposes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same:* That the Judges of the Orphans' court of the commonwealth of Pennsylvania, within five years after the final decree, confirming the original or supplementary account of any executor, administrator, or guardian, which has or may be hereafter passed, as aforesaid, upon petition of review being presented by such executor, administrator, or guardian, or their legal representatives, or by any person interested therein, alleging errors in such account which errors shall be specifically set forth in said petition of review, and said petition and errors being verified by oath or affirmation, said Orphans' court shall grant a rehearing of so much of said account as is alleged to be error in said petition of review, and give such relief as equity and justice may require by reference to auditors, or otherwise with like right of appeal to the Supreme court as in other cases, except that the appeal shall be taken under the provisions of this act within one year after the decree made on the petition of review: *Provided,*, That this act shall not extend to any cause when the balance found due shall have been actually paid and discharged by any executor, administrator, or guardian.

SECTION 2. That upon the return of a writ of fieri facias levied upon real estate of the defendant, with the inquisition assessing the value of the yearly rents, or profits thereof, the plaintiff may at his election instead of suing out a writ of liberari facias for the purpose of having the said real estate delivered to him at the valuation and appraisement, permit the defendant or defendants, or any other person or persons, claim-

Orphans' Courts within five years after final decree may grant rehearing.

Plaintiff instead of issuing liberari facias may demise premises to defendant, at valuation.

ing under him or them, by demise or title subsequent to the judgment, upon which the said fieri facias issued to retain the possession of the said real estate at the annual valuation and appraisement, so as aforesaid made by the inquest. And the said plaintiff or his attorney, shall signify his election, so to permit the said defendants, or other person so claiming to the sheriff, who may have the said writ of fieri facias in his hands for execution, within ten days after the holding of the inquisition, and it shall be the duty of the said sheriff, to notify the said defendant, or other person so claiming thereof, within ten days after said notice shall be given to him by the plaintiff. And it shall be the duty of the said defendant, or other person so claiming, within ten days thereafter, to notify the said sheriff of his willingness to retain the said real estate at the annual valuation and appraisement so as aforesaid, made in pursuance of the "Act entitled an act relating to executions passed the sixteenth day of June, one thousand eight hundred and thirty-six," and upon his neglect or refusal so to do, the plaintiff may have a writ of venditioni exponas, to sell the said real estate, for the payment of his debt. All which notices required by this act, shall be in writing, signed by the parties or their attorneys, and shall be served, by delivering a copy to the party plaintiff, or defendant, or to the person in possession of the real estate, or leaving the same at his residence with an adult member of his family, and of all which the said sheriff shall make return according to law, and be entitled to mileage as in other cases.

If defendant refuses to take at valuation plaintiff may issue venditioni exponas,

When defendant retains, at valuation, the rent to be paid half yearly.

On failure to pay, venditioni exponas may be issued.

SECTION 3. If the said defendant, or defendants, or other person, claiming the said real estate, as aforesaid, shall signify his or their willingness to retain the same at the valuation and appraisement in pursuance of the first section of this act, he or they shall thereby become liable to pay to the plaintiff the amount of the said annual valuation and appraisement in half yearly instalments, until the debt, interest, and cost of the said fieri facias be fully paid; the first of said instalments to be paid in six months from the day the defendant, or person claiming, as aforesaid, shall deliver notice to the sheriff declaring his or their willingness to retain said real estate, which date the sheriff is hereby required to endorse on said notice, and on failure to make payment for a period of thirty days after any half yearly instalment shall become due, it shall be lawful for the plaintiff, his agent, or attorney, upon making affidavit thereof, and filing the same in the prothonotary's office, to issue a writ of venditioni exponas for the sale of said real estate, as fully and with like effect as though a condemnation thereof had taken place.

SECTION 4. On the return by the sheriff of the notices and proceedings prescribed by the second and third sections of this act, it shall be lawful for the court, out of which the fieri

facias issued on the application of any creditor, to make an order directing the manner in which the money arising from such half yearly instalments shall be distributed among the different lien creditors according to the priority of their liens, in the same manner and with like effect as in case of distribution of money arising from sheriff's sales; and it shall be the duty of the defendant or person in possession of said estate, to pay said instalments to the plaintiff or party entitled to receive the same under such decree, or to his or their agent, or attorney, or to the sheriff of the proper county, when such plaintiff, or person, his or their agent, or attorney, reside out of said county.

Distribution of half yearly instalments to lien creditors.

To whom instalments to be paid.

SECTION 5. Where real estate has heretofore been extended on a writ of fieri facias and no writ of liberari facias issued to take possession thereof, it shall be lawful for the plaintiff to either issue out his writ of liberari facias or give the defendant thirty days notice of his election, to permit the defendant to retain possession of the same, and the defendant shall within twenty days thereafter notify the plaintiff whether he will retain the same or deliver over said premises to the plaintiff at the annual valuation, and on failure so to do, or on failure to pay said valuation half yearly, like proceedings shall be had for the sale of said premises as is prescribed by the second and third sections of this act. The notices to be served and returns thereof made in the manner before prescribed.

Where real estate has been extended and no Lib. Fa. issued, same proceedings as in prior sections.

SECTION 6. Whenever an estate for life, in any improved lands, or tenements, yielding rents, issues, or profits shall hereafter, be taken in execution; the court shall upon the application of any lien creditor, award a writ to sequester the rents, issues, and profits of such estate, and appoint a sequestrator to carry the same into effect.

Sequestrator of rents of life estates taken in execution.

SECTION 7. The sequestrator so appointed, shall have power according to the direction of the court to rent or sell such lands or tenements, for such term during the life of the persons upon whom such estate therein shall depend, as shall be sufficient to satisfy all the liens against the same, together with all charges for taxes, repairs, and expenses which shall be incurred during said term, and he shall apply the proceeds thereof under the direction of the court in the payment of such liens according to their priority.

Powers of sequestrator

SECTION 8. The court shall have power, if they deem it necessary, to require from such sequestrator a bond with sufficient security for the faithful execution of his trust, and to compel him to account from time to time, as they shall think necessary, and they may make all such orders, allowances and decrees in the premises, and enforce the same in like manner, and as fully and effectually, as a court of chancery might do in the like case.

Sequestrator to give security.

Parts of act
of 1836 rela-
ting to execu-
tions repealed

SECTION 9. The fifty-second, fifty-third, fifty-fourth, fifty-fifth, fifty-sixth, fifty-seventh, sixty-fifth, sixty-seventh, sixty-eighth, sixty-ninth, seventieth and seventy-first sections of the act last recited, are hereby repealed; except in such cases as may have already occurred, and so far as the same may be necessary to complete a proceeding commenced under the same.

Number of
Tip Staves
and Consta-
bles of Court
of General
Sessions.

SECTION 10. That the seventy-eighth section of the act entitled "An act relative to the organization of the courts of Justice, passed the fourteenth day of April, one thousand eight hundred and thirty four," shall not be construed to authorize "the court of general sessions for the city and county of Philadelphia," to appoint a greater number of tipstaves, and special constables together than twelve, nor shall the said court have power to appoint any special, or high constable, except the number provided for in the act entitled "An act to establish a court for the trial of crimes and misdemeanors committed in the city and county of Philadelphia," passed the twenty-fifth day of February, eighteen hundred and forty. And the said court shall divide the ward and township constables of the city and county of Philadelphia, as near as may be into twelve divisions: one for each month, and the said court may if necessary employ all or any number, of any one of said divisions during one month, but shall in no case employ at any one time, more of said constables than is comprised in one division, the constables and other officers appointed by, and attendant upon the court of General Sessions for the city and county of Philadelphia, shall be, and they are hereby empowered and required under the direction of the said court, to execute such process as may be directed to them, and all fees and costs for such service shall be taxed by, and paid to the clerk of the said court, who shall account for, and pay the same to the treasurer of the county of Philadelphia, for the use of the county.

Selection of
constables,
their powers.

When Insol-
vent debtors
are accused
or convicted
of fraudulent
insolvency, a
receiver may
be appointed
His duties.

SECTION 11. In any case where a petitioner for the benefit of the insolvent laws of this commonwealth, heretofore has been or hereafter may be bound over or committed for trial by any court of this commonwealth, under the provisions of the forty-second and thirty-third sections of the act entitled "an act relating to insolvent debtors," or where any such person has been, or shall be tried and convicted of any offence under the provisions of said sections, or of fraudulent insolvency under any other law of this commonwealth, it shall be the duty of the court of the proper county on the application of any creditor to appoint a receiver of all the estate which belonged to such insolvent debtor, which said receiver shall be appointed and removed in the same manner, invested with like powers, perform like duties, subject to like control of the court, give like security in like form, and generally do, and perform,

all the duties enjoined by law on the assignees of estates of insolvent debtors, and shall by force and virtue of such appointment become absolutely vested with all the estate, property and effects of such insolvents, as fully as assignees of insolvent debtors are by the laws of this commonwealth, and be able and capable in law to sue, and be sued, in like manner, being in all cases stiled and named receiver of such estate.

SECTION 12. That so much of the act entitled an act to amend and consolidate with its supplements, the act entitled an "Act for the recovery of debts, and demands not exceeding one hundred dollars before a justice of the peace, and for the election of constables, and for other purposes passed the twentieth of March, eighteen hundred and ten," as provides that the justice shall enter judgment against a constable for the amount of an execution together with costs, on which judgment there shall be no stay of execution, shall not be construed to deprive the constable of the right of appeal to the Court of Common Pleas of the proper county, upon such conditions and under like limitations, as in the case of other defendants. Constables may appeal from judgments against them for amount of executions in their hands.

SECTION 13. That when any number of persons, citizens of this commonwealth, are associated or mean to associate for any literary, charitable or religious purpose, or for the purpose of forming any fire engine or hose company, or beneficial society, or association, and shall be desirous to acquire and enjoy the powers and immunities of a corporation or body politic in law; it shall and may be lawful for such persons to prepare an instrument in writing: therein specifying the objects, articles, conditions and name, style or title under which they have associated or mean to associate, and the same to exhibit and present to the Court of Common Pleas of the proper county in which said corporation is intended to be situated, or its principal business transacted, which said court is hereby required to peruse and examine said instrument, and if the objects articles and conditions therein set forth and contained, shall appear lawful, and not injurious to the community, said court shall direct said writing to be filed in the office of the prothonotary of said court, and also direct notice to be inserted in one newspaper, printed in the proper county, for at least three weeks, setting forth that an application has been made to said court to grant such charter of incorporation, and if no sufficient reason is shown to the contrary, it shall be lawful for said court at the next term thereafter, to decree and declare by their order endorsed on said instrument, attested in the usual manner by the prothonotary, under the seal of said court, that the persons so associated shall according to the articles and conditions in said instrument set forth and contained, become and be a corporation or body politic, and further direct that said charter of incorporation shall be recorded in the of- Incorporation of literary, charitable and religious associations, and fire engine and hose companies.

By courts of common pleas.
Proceedings.

Notice.

Decree of incorporation to be recorded.

fice for the recording of deeds in said county, and on said instrument being so recorded the persons so associated or meaning to associate, shall according to the objects articles and conditions in said instrument set forth and contained, become and be a corporation or body politic in law and in fact, to have continuance by the name style and title in such instrument provided and declared.

Amendment
of articles and
conditions of
foregoing
charters.

SECTION 14. As often as the corporations which shall be established under the provisions of this act, or have been or shall be established under the act passed the sixth day of April, seventeen hundred and ninety-one, entitled an act to confer on certain associations of citizens of this commonwealth, the powers and immunities of corporations or bodies politic in law, to which this is a supplement, shall be desirous of improving, amending, or altering the articles and conditions of the instrument upon which said corporations are respectively formed and established, it shall and may be lawful for such corporations respectively in like manner to specify the improvements, amendments or alterations, which are, or shall be desired, and exhibit the same to the court of common pleas of the proper county, in which said corporation is situated as aforesaid, when if said court shall be of opinion such alterations are, or will be lawful and beneficial, it shall be the duty of said court to direct the same notice and proceedings to take place, which are prescribed in the first section of this act, and after decree made, and said amendments are recorded the same shall be deemed and taken to be a part of the instrument upon which said corporations respectively were formed and established, to all intents and purposes, as if the same had originally been made part thereof.

Fees.

By whom to
be paid.

Copies.

Act of 1791
continued.

SECTION 15. The usual fees allowed by law for equal or similar services, shall be received by the respective county officers under the provisions of this act, and all the expense of procuring said charter of incorporation and recording the same, shall be borne by the persons applying therefor, and after said articles of association shall be recorded as before directed, the same shall be duly certified to be recorded and delivered over to the applicants, and a copy of the record duly certified shall be at all times as good evidence as the original might or could be.

SECTION 16. The third section of the act of the sixth of April, one thousand seven hundred and ninety-one, entitled "an act to confer on certain associations of the citizens of this commonwealth the powers and immunities of corporations, or bodies politic in law," and the second section of the supplement thereto, passed the eighth day of April, one thousand eight hundred and thirty-three, be and the same are hereby extended to and made part of this act, as fully as though the same were hereby re-enacted, and all corporations to be created un-

der the provisions of this act, shall be subject to the provisions of said sections.

SECTION 17. Nothing in this act contained shall be construed to alter or change the jurisdiction of the Supreme Court of this state, in relation to corporations, but the same shall remain as heretofore, and no college, academy, or female seminary, which shall be incorporated under the provisions of this act, or the acts to which this is a supplement, shall be entitled to any portion of the annual appropriation provided for such institutions, by the fourth section of an act entitled "A supplement to an act to consolidate and amend the several acts relative to a general system of education, by common schools, passed the thirteenth day of June, one thousand eight hundred and thirty-six," said supplement passed the twelfth day of April, one thousand eight hundred and thirty-eight.

Power of Supreme Court over corporations preserv'd
Colleges, academies and female seminaries incorporated under this act excluded from appropriation of 12 April, 1838.

SECTION 18. That in all actions of account render, now pending, or which may hereafter be brought, after it shall have been found or admitted by the pleadings, that the defendant is liable to account to the plaintiff, it shall be in the discretion of the court in which the same is or shall be pending, to either appoint auditors and proceed according to the practices and usages of the common law, or direct a jury to be impanelled to settle the accounts of the parties, and find the balance due the plaintiff, or defendant. And on the application of either of the parties, and interrogatories filed, it shall be lawful for the court to require the adverse party to disclose on oath his knowledge of such facts, as shall in the opinion of said court be necessary for a just and equitable adjustment of the controversy, and on the party being so called on, and refusing to answer on the requisition of the court the fact stated by the adverse party in his interrogatory, shall be taken as admitted, and the parties shall have power to compel the production of such books, papers and documents, either in court or before the auditors, as may be necessary for a just and equitable settlement of the controversy, according to the provisions of the first section of the act of twenty-seventh February, one thousand seven hundred and ninety-eight entitled "An act extending the powers of the Supreme court and courts of Common Pleas."

In account render
when defendant is liable to account auditors may be appointed or jury trial ordered
Parties may be required to disclose of acts on oath
Parties may be compelled to produce books, &c.

SECTION 19. The Supreme court, the several district courts and courts of Common Pleas, within this commonwealth, shall have all the powers and jurisdiction of courts of chancery in settling partnership accounts, and such other accounts and claims, as by the common law and usages of this commonwealth have heretofore been settled by the action of account render, and it shall be in the power of the party desirous to commence such action to proceed, either by bill in chancery or at common law, but no bill in chancery shall be entertained unless the counsel filing the same shall certify that in his

Chancery powers vested in Courts in settling partnership and other accounts
Parties may proceed by bill in chancery or at common law

opinion the case is of such a nature, that no adequate remedy can be obtained at law, or that the remedy at law will be attended with great additional trouble, inconvenience or delay.

Act relating
to account
render re-
pealed.

SECTION 20. The act entitled "An act concerning the action of account render, passed the fourth day of April, one thousand eight hundred and thirty-one, be and the same is hereby repealed.

Recorders of
deeds may
take acknow-
ledgments of
feme coverts

SECTION 21. The several recorders of deeds within this commonwealth heretofore authorized to take the acknowledgment of deeds and other writings, shall have power and are hereby authorized to take and certify the separate examination and acknowledgment of any *feme covert* of or concerning any instrument of writing relating to lands, tenements or hereditaments, as fully and with like force and effect, as any judge or justice of the peace of this commonwealth might or could do.

Comm'rs of
Dauphin co.
may borrow
\$30,000.

SECTION 22. That the commissioners of the county of Dauphin be, and they are hereby authorized to borrow any sum of money not exceeding thirty thousand dollars, for the purpose of erecting a new county prison with appurtenant buildings, and making payment of the purchase money of any additional ground adjoining the present site on which said buildings is to be erected.

Comm'rs of
Moyamensing
may borrow
\$15,000.

SECTION 23. The commissioners of the township of Moyamensing, in the county of Philadelphia, be and they are hereby authorized and invested with full power to borrow upon the faith of the corporation the sum of fifteen thousand dollars, to enable them to pay certain permanent and temporary loans and other debts now due by said corporation.

Moyamensing
sinking fund
to be created

SECTION 24. It shall be the duty of the commissioners of the township of Moyamensing to set apart each and every year, out of the proceeds of the taxes or other revenues of said township the sum of one thousand dollars, to constitute a sinking fund to extinguish the present debt of the said township, the said fund to be immediately applied to the purchase of said debt, or if it cannot be purchased at par or for a less price the said commissioners are hereby authorized to invest said funds in stocks of the state of Pennsylvania, the county of Philadelphia, or of the city of Philadelphia, to be used and applied to the payment of the debts of said township, as they may be purchased as above directed or become due.

Proceeds of
landings,
wharves and
market houses
of Southwark
vested in
comm'rs for
creating a
sinking fund.

SECTION 25. From and after the first day of January, 1841, it shall be lawful for the commissioners of the district of Southwark, and their successors, to collect all the income and rents issuing from the public landings, wharves and market houses, in the said district, together with such other rents, issues or income derived from any other source other than taxes, and after deducting therefrom the expense of keeping the said landings and market houses in repair and order, forthwith set

apart the said rents and income, and hold them inviolably in trust for the following purposes and uses, and for no other use or purpose whatever; that is to say, they, the said commissioners or their successors shall as soon as can be, appropriate the said monies to the payment of the debt of said district, as it becomes due, or to the purchase of the same at par, or at a less price, and when this cannot be done, the said monies shall be invested in the debt of the city or county of Philadelphia, or in the debt of the commonwealth of Pennsylvania, and the interest thereon shall be suffered to grow and accumulate, which said fund so to be invested from time to time, as aforesaid, together with the interest, profit or income, accumulated therein and re-invested, as hereinbefore directed, shall be exclusively set apart and denominated the sinking fund of the district of Southwark, and shall be solely appropriated and applied to the extinguishment of the principal or capital sum of the funded debt of the said district, as it may become due, or be purchased at par or for less price, and to and for no other use or purpose whatever.

SECTION 26. It shall be the duty of the commissioners of the district of Southwark, and the commissioners of the township of Moyamensing, hereafter, annually, to cause to be levied upon the property and persons made taxable by law within the said district and township, a sum sufficient with the other revenues, to pay all the annual expenditures of said district or township, the interest on all loans made for the use of the said district or township, and a sum sufficient to form the sinking funds hereinbefore created.

Amount of tax which shall be levied in Southwark and Moyamensing.

SECTION 27. That from and after the passage of this act, it shall not be lawful for the commissioners of the district of Southwark, or the commissioners of the township of Moyamensing, to borrow on loan for a greater period than ninety days, any sum or sums of money exceeding in amount the one-fifth part of the taxes levied in any one year in the said district or township, without first obtaining the sanction and consent of the legislature of this commonwealth for authority to contract such loan. And the said sum or sums of money which it may be lawful for them to borrow without the consent of the Legislature shall not be borrowed for a period more than ninety days, and shall not exceed in amount the one-fifth part of the taxes aforesaid.

Power of comm'rs of Southwark & Moyamensing to borrow money limited

SECTION 28. That before making application for authority to borrow on loan, for a greater period than ninety days, any sum or sums of money, exceeding in amount the one-fifth part of the amount of taxes levied in the said district of Southwark, or the township of Moyamensing, the said Commissioners shall publish in at least three of the daily papers published in the city of Philadelphia, twice in each week, for six months before the meeting of the Legislature, public notice of

Relative to permanent loans by comm'rs of Southwark and Moyamensing.

their intention so to apply for authority to contract such loan. *Provided*, however, that nothing contained in this act, shall be taken or construed to impair or in anywise to alter or abridge the power and authority of the Commissioners of the district of Southwark, or the Commissioners of the township of Moyamensing, without the sanction and consent of the Legislature to renew and to extend from time to time, as they may deem proper, the time of payment of the several loans already contracted, at the different periods of time at which they may severally become payable.

Alley in boro'
of Towanda
may be open-
ed.

SECTION 29. That the street commissioners of the borough of Towanda be, and they are hereby authorized and required to lay out and open an alley eleven feet wide, from Spruce street to South, in said borough, two hundred and eleven feet west of Main street, and parallel with the same, and in conformity with an agreement between the original proprietors of the lots through and along which the said alley will pass. And in case any person shall consider himself damaged or aggrieved, by the act hereby required to be done, he may on complaint to the chief burgess, and due notice given to the persons interested, have a hearing before the said burgess and town council of the said borough, and, if dissatisfied with their decisions, may bring suit in the court of common pleas of said county against said borough for the recovery of such damages as he shall sustain by reason of the premises.

WM. HOPKINS,

Speaker of the House of Representatives.

E. KINGSBURY, Jr.

Speaker of the Senate.

APPROVED—The thirteenth day of October, in the year one thousand eight hundred and forty.

DAVID R. PORTER.

SECRETARY'S OFFICE.

Pennsylvania, ss.



I DO CERTIFY that the within, is a true copy of the original law remaining on file in this Office. Witness my hand and the seal of the said Office, at Harrisburg, the fourteenth day of October, A. D. one thousand eight hundred and forty.

FRS. R. SHUNK.

Secretary of the Commonwealth.